

REMARKS

Favorable reconsideration of this application is respectfully requested.

Claims 1, 3, 4, and 6-50 are pending in this application. Claims 6-46 stand withdrawn from consideration as directed to a non-elected invention. Claims 1, 3-5, and 47-50 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. patent 6,587,837 to Spagna et al. (hereinafter "Spagna") in view of U.S. patent 5,892,900 to Ginter et al. (herein "Ginter").¹ That rejection is traversed by the present response as discussed next.

Applicants respectfully submit the outstanding rejection is not fully considering all the claimed features. Independent claim 1 recites:

receiving appreciation records through said
communication medium by said server at regular intervals, the
appreciation records including a number of times of
reproduction with attribution of said music information
reproduced by said music reproduction apparatus[.]

Applicants respectfully submit that feature clearly distinguishes over the applied art.

With respect to the above-noted features the outstanding Office Action cites Spagna at column 4, lines 26-32, column 13, lines 31-37, and column 23, lines 50-52. In reply applicants submit such disclosures in Spagna do not correspond to the claimed features as currently written.

Spagna is directed to a method for permitting electronic delivery of digital content that may be distributed electronically via a web interface and that includes content such as print media, films, games, programs, television, multimedia, and music.² In Spagna an electronic store may need to create licenses for the permitted use of a copyrighted digital content that match usage conditions. For example the license may grant permission to make

¹ The statement for the outstanding rejection notes claim 5 as rejected, but claim 5 was previously canceled in the Amendment filed July 13, 2006. The features recited in claim 5 were then incorporated into independent claim 1. Clarification of the statement for the rejection is requested.

² Spagna at the Abstract.

a limited number of copies of the digital content.³ In Spagna a digital content electronic distribution system 100 assists with: metadata extraction, secondary usage conditions, SC packaging, and tracking of electronic content transactions. The secondary usage conditions data can include retail business offers such as content 113 purchase price, pay-per-listen price, copy authorization and target device types, or timed-availability restrictions.⁴ In Spagna the content usage control layer 505 permits the specification and enforcement of the conditions or restrictions imposed on the use of content 113 at the end-user devices 109. The conditions may specify the number of plays allowed for the content 113.⁵

From the above-noted descriptions in Spagna, applicants respectfully submit it is clear Spagna does not disclose or suggest that appreciation records including a number of times of music information reproduction are received by a server at regular intervals. In contrast to that claimed feature, Spagna discloses that a number of plays specified by conditions, etc. and allowed for contents is transmitted from a provider side to an end device side (see Spagna at col. 23, line 50 et seq.). In Spagna the end user device is thereby made capable of performing reproduction within the received number of plays. Spagna does not disclose or suggest that a number of times of reproduction performed by the end user device is provided by the provider side.

In the music distribution device according to claim 1 as currently written, and in contrast to Spagna, it is not until a server receives the number of times of reproduction performed by a reproduction apparatus that the payment according to the number of times of reproduction can be made to a copyright holder. In Spagna, in contrast to such features, it is impossible to make such a payment according to a number of times of reproduction performed by the end user device to a copyright holder.

Independent claim 1 also further recites:

³ Spagna at column 4, lines 26-30.

⁴ Spagna at column 13, lines 31-37.

⁵ Spagna at column 23, lines 48-52.

distributing a payment to a copyright holder who holds a copyright of said music information, in accordance with the number of times of reproduction, the payment being drawn from the membership fee paid by the listener.⁶

That feature also distinguishes over the applied art.

The outstanding Office Action also recognizes that Spagna does not disclose the above feature, and to cure that recognized deficiency in Spagna the outstanding Office Action cites Ginter, particularly citing Ginter at column 20, lines 23-43, column 24, lines 24-53, column 135, lines 44-52, column 140, lines 25-43, column 38, lines 1-24, and column 312, lines 28-32.

In reply applicants note Ginter is directed to a system and method for secure transaction management and electronic rights protection. Ginter indicates a certain content provider might, for example, require metering the number of copies made for distribution to employees of a given software program.⁷ The same provider might also charge fees based on the total number of different properties licensed from them by the user and a metering history of their licensing of properties might be required to maintain this information.⁸ The content provider may further choose to charge only once for access to a portion of a property, regardless of the number of times that portion of the property is accessed by a user.⁹ One object 300 may come with relatively simple methods, such as allowing unlimited viewing within a fixed period of time for a fixed fee.¹⁰ A certain flat rate fee may also apply to opening the periodical regardless of the number of articles opened.¹¹

However, from the above descriptions in Ginter applicants respectfully submit it is clear that Ginter does not disclose or suggest that a payment according to a number of times

⁶ With respect to the basis for the rejection, applicants again note the outstanding Office Action cites a rejection to claim 5 which was previously canceled. Clarification of any grounds for rejection is requested.

⁷ Ginter at column 20, lines 33-35.

⁸ Ginter at column 20, lines 39-43.

⁹ Ginter at column 20, lines 49-53.

¹⁰ Ginter at column 135, lines 44-46.

¹¹ Ginter at column 312, lines 28-29.

of reproduction is distributed to a copyright holder who holds a copyright of music information.

In contrast to the above-noted claim feature, Ginter discloses charging fees based on the total number of different properties, allowing unlimited viewing within a fixed period of time for a fixed fee, and so on. Although Ginter discloses communications between a provider and the user, Ginter does not provide any disclosure of addressing a copyright holder, and thus Ginter clearly does not address any communication between a provider and a copyright holder. The claims are directed to distributing a payment to a copyright holder. As Ginter does not even address a relationship with a copyright holder, clearly Ginter could not disclose or suggest features.

In such ways Ginter does not cure the recognized deficiencies in Spagna as Ginter does not disclose or suggest distributing a payment according to a number of times of music reproduction to a copyright holder of the music information.

In maintaining the rejection the outstanding Office Action also merely states “Spagna disclosing sending usage reports on periodic basis. Purpose of a report is to reflect the latest usage”.¹²

The above-noted explanation as to why the rejection is maintained does not address any of the above-noted positively recited claim features. The claims are not directed to merely sending a usage report on a periodic basis. The claims are more specific in indicating that a specific server receives appreciation records that include a number of times of reproduction of music. The mere sending of a usage report does not at all correspond to such claim features. The outstanding rejection appears to not fully consider all of the claim features. As discussed above, the claims clearly positively recite features that distinguish over Spagna in view of Ginter.

¹² Office Action of November 28, 2006, page 2, “Response to Arguments” section.

In view of the present response applicants respectfully submit that the claims as written distinguish over the applied art.

As no other issues are pending in this application, it is respectfully submitted that the present application is now in condition for allowance, and it is hereby respectfully requested that this case be passed to issue.

Respectfully submitted,

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